

ORIGINAL

WRIT NO. W00-00328-T(A)

THE STATE OF TEXAS) IN THE 283rd JUDICIAL
)
VS.) DISTRICT COURT OF
)
PATRICK HENRY MURPHY, JR.) DALLAS COUNTY, TEXAS

REPORTER'S RECORD

RECEIVED IN
COURT OF CRIMINAL APPEALS

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On November 6, 2007, came on to be heard before the
HONORABLE RICK MAGNIS, Judge of the 283rd Judicial
District Court of Dallas County, Texas, the above
entitled and numbered cause.

Proceedings reported by computerized stenotype
machine; Reporter's Record produced by computer-assisted
transcription.

A P P E A R A N C E S

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FOR THE STATE OF TEXAS

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FOR THE DEFENDANT

1 **P R O C E E D I N G S**

2 THE COURT: This is Cause Number -- Writ
3 Number W00-00328-T(A), Ex Parte Patrick Henry Murphy.

4 Is that you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Murphy, the Court bench
7 warranted you to Dallas. I had received some indication
8 that there was some concern on your part about the
9 quality of your representation on the 11.07(1) writ. In
10 addition, I have reviewed the writ and I had some
11 questions about what work was done or not done.

12 Do you understand why you're here today?

13 THE DEFENDANT: Yes, sir, I do.

14 THE COURT: Your attorney has explained to
15 you what's going on?

16 THE DEFENDANT: Yes, sir. We have spoken
17 about it.

18 THE COURT: I have looked at the guidelines
19 and standards for representation of an 11.07(1) writ. I
20 wanted to talk to you a little bit about some of the
21 things that those standards require. I'm just going to
22 provide this to you by way of information.

23 First of all, the habeas counsel must
24 understand the state habeas corpus proceeding is not
25 another direct appeal or a second direct appeal; that

1 the habeas counsel cannot rely on previously compiled
2 records but must conduct a thorough and independent
3 investigation.

4 Counsel has the duty to thoroughly
5 investigate the case as if it were a second trial. In
6 addition, counsel has a duty to look at all claims, has
7 a duty to meet you face-to-face and develop a
8 relationship with you, keep you informed of case
9 developments, to examine both phases of the trial
10 thoroughly, should interview the prior counsel and
11 members of the defense team, should actually do a
12 complete -- another investigation, both of the
13 guilt-innocence and the mitigation, including hiring a
14 mitigation expert to review all the mitigation evidence,
15 see if there are any other issues.

16 They should locate and interview witnesses,
17 additional witnesses that were not called at trial,
18 should verify testimony of witnesses at trial, should
19 obtain confidential records.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, I was prepared today to
23 conduct a hearing to determine whether your attorney had
24 failed to perform some of those duties.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I am prepared to have that
2 hearing. Do you wish to have a hearing of that nature?

3 THE DEFENDANT: Your Honor, no, sir, I do
4 not wish to have that hearing because I realize that --

5 THE COURT: I don't need to get into any of
6 the wheres or whys. You understand that if I conducted
7 that hearing and it was determined that counsel failed
8 to perform up to the standards and guidelines for writ
9 counsel, that your counsel was prepared to file a motion
10 to withdraw?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I indicated that I would be
13 prepared to accept that and appoint new counsel.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, I don't know -- in the
16 event that that were to occur, if I had that hearing,
17 your counsel withdraw and I appointed new counsel, I
18 don't know if new counsel would be able to re-brief this
19 without it being treated as a second writ or not. That
20 would be up to the Court of Criminal Appeals. This is
21 actually a case of first impression.

22 Certainly if you asked me not to conduct
23 that hearing, then the writ as it stands more than
24 likely be all that the Court of Criminal Appeals will
25 consider and all I'll be able to consider.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is it your wish to retain Mr.
4 Fishburn as counsel?

5 THE DEFENDANT: Yes, it is.

6 THE COURT: Do you understand in the event
7 that you are not granted relief by the Court of Criminal
8 Appeals that he will represent you in federal
9 proceedings?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: Do you have any questions for
12 me?

13 THE DEFENDANT: No, sir, I don't.

14 THE COURT: In that event I'm not going to
15 inquire into what Mr. Fishburn has or has not done. I
16 will respect your wishes regarding your representation
17 in this matter.

18 THE DEFENDANT: Thank you.

19 THE COURT: Is there anything further from
20 anyone else?

21 MS. SMITH: State has nothing.

22 MR. FISHBURN: Nothing, Your Honor.

23 THE COURT: Mr. Murphy --

24 MR. FISHBURN: Mr. Murphy has brought me a
25 writing that's in his left breast pocket that he would

1 like to give me. If I could get that before he goes.

2 THE DEFENDANT: It's just some ideas I
3 wrote down last night.

4 THE COURT: I'm going to release the hold
5 and have you sent back.

6 THE DEFENDANT: Thank you, sir.

7 THE COURT: We're in recess.

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10 (End of Proceedings)

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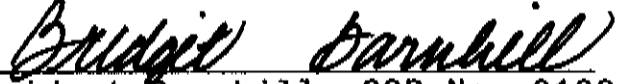
1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, Bridget Barnhill, Official Court Reporter in and
4 for the 283rd Judicial District Court of Dallas County,
5 Texas do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in the
9 reporter's record in the above-styled and numbered
10 cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this transcription of the
13 proceedings truly and correctly reflects the exhibits,
14 if any, admitted by the respective parties.

15 WITNESS MY HAND this the 6th day of November, 2007.

16 
17 Bridget Barnhill, CSR No. 3199
18 Official Court Reporter
19 283rd Judicial District Court
Dallas County, Texas

20 Date of Expiration of Current
21 Certification: 12-31-08
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